

Measurabl Service Terms

PLEASE READ THIS TERMS OF USE AGREEMENT (THE “**TERMS OF USE**” OR “**AGREEMENT**”) CAREFULLY. THESE TERMS OF USE GOVERN THE USE OF THE SERVICES AND RESOURCES AVAILABLE OR ENABLED VIA THE WEBSITE AND YOUR SUBSCRIPTION TO THE SERVICES IDENTIFIED IN THE ORDERING PROCESS (EACH A “**SERVICE**” AND COLLECTIVELY, THE “**SERVICES**”).

CLICKING ON THE “I ACCEPT” BUTTON, COMPLETING THE REGISTRATION PROCESS, YOU REPRESENT THAT (1) YOU HAVE READ, UNDERSTAND, AND AGREE TO BE BOUND BY THE TERMS OF USE, (2) YOU ARE OF LEGAL AGE TO FORM A BINDING CONTRACT WITH COMPANY, AND (3) YOU HAVE THE AUTHORITY TO ENTER INTO THE TERMS OF USE PERSONALLY OR ON BEHALF OF COMPANY YOU HAVE NAMED AS THE USER, AND TO BIND THAT COMPANY TO THE TERMS OF USE. THE TERM “YOU” OR “SUBSCRIBER” REFERS TO THE INDIVIDUAL OR LEGAL ENTITY, AS APPLICABLE, IDENTIFIED AS THE USER WHEN YOU REGISTERED ON THE WEBSITE. **IF YOU DO NOT AGREE TO BE BOUND BY THE TERMS OF USE, YOU MAY NOT ACCESS OR USE THE SERVICES.**

For contractual purposes, You (1) consent to receive communications from Measurabl in an electronic form; (2) consent to execute this Agreement electronically; and (3) agree that all notices, disclosures, and other communications that Measurabl provides to you electronically satisfy any legal requirement that such communications would satisfy if it were to be in writing.

THE TERMS OF USE LIMIT THE REMEDIES THAT MAY BE AVAILABLE TO YOU IN THE EVENT OF A DISPUTE.

YOU ACKNOWLEDGE AND AGREE THAT ALL DATA MAY BE PROCESSED AND STORED IN THE UNITED STATES OF AMERICA AND YOU HEREBY CONSENT TO SUCH PROCESSING AND STORAGE. MEASURABL WILL USE PERSONAL DATA ONLY IN WAYS THAT ARE COMPATIBLE WITH THE PURPOSES FOR WHICH IT WAS COLLECTED OR AS SUBSEQUENTLY AUTHORIZED BY YOU. FOR EUROPEAN UNION DATA, PLEASE SEE OUR [PRIVACY SHIELD STATEMENT](#).

This Agreement will become effective when the registration process is completed (the “*Effective Date*”).

1. ACCESS AND USE

1.1 Orders. The Measurabl Service includes the base service (either Premium or Pro as ordered through the registration process) as well as any optional Add-On Service. The registration/ordering process shall set out a description of the applicable Measurabl Services to be provided by Measurabl, the costs associated with such Measurabl Services, the minimum number of Sites ordered, and the period of time Subscriber will have access to the particular Measurabl Service (the “**Access Term**”).

1.2 Provision of Access. Subject to the terms and conditions contained in this Agreement, Measurabl hereby grants to Subscriber and its Authorized Users a non-exclusive, non-transferable right to access the features and functions of the applicable Measurabl Service set forth in the applicable Order during the Access Term identified in the Order for the number of Authorized Users and the number of Sites set forth on the Order. On or as soon as reasonably practicable after the Effective Date, Measurabl shall provide to Subscriber the necessary passwords, security protocols and policies and network links or connections and Access Protocols to allow Subscriber and its Authorized Users to access the Measurabl Services. Subscriber and any Authorized User may only use the Measurabl Services in accordance with the Access Protocols.

1.3 Usage Restrictions. Subscriber shall not: (a) decompile, disassemble, reverse engineer or otherwise attempt to obtain or perceive the source code from which any software component of the Measurabl Services are compiled or interpreted, and Subscriber acknowledges that nothing in this Agreement will be construed to grant Subscriber any right to obtain or use such code; (b) allow third parties other than Authorized Users to gain access to the Measurabl Services; or (c) attempt to scrape or otherwise frame any of the data or reports created with the Measurabl Service.

1.4 Retained Rights; Ownership.

(a) Ownership and Use of Subscriber Data. Subscriber retains all right, title and interest in and to the Subscriber Data, and Measurabl acknowledges that it neither owns nor acquires any additional rights in and to the Subscriber Data not expressly granted by this Agreement. Measurabl further acknowledges that Subscriber retains the right to use the Subscriber Data for any purpose in Subscriber’s sole discretion. Measurabl may use the Subscriber Data to provide the Services and share the Subscriber Data with third parties as directed by Subscriber.

(b) Ownership of Measurabl Services. Subject to the rights granted in this Agreement, Measurabl retains all right, title and interest in and to the Measurabl Service, and Subscriber acknowledges that it neither owns nor acquires any additional rights in and to the foregoing not expressly granted by this Agreement or any licenses to the software used to provide the Measurabl Services. Subscriber further acknowledges that Measurabl retains the right to use the foregoing for any purpose in Measurabl’s sole discretion.

(c) Use of Anonymous Data. Subscriber agrees and acknowledges that Measurabl may use the Subscriber Data in an anonymized and aggregated form for the purposes of benchmarking and analysis. Subscriber grants Measurabl a worldwide, perpetual, fully paid-up, royalty free, non-exclusive right and license to: (a) use, reformat, display, transform, and create

derivative works of the Subscriber Data for the purpose of adding the Subscriber Data to Measurabl's database in an anonymous manner and creating insights or other derived data from such Subscriber Data; (b) to use, display, modify and create derivative works of the Subscriber Data solely to create and compile Aggregate Data to use for Measurabl's benchmarking and analytics purposes and within its database; and (c) to copy, display, modify and distribute the Aggregate Data. "Aggregate Data" means aggregated statistics and/or any data created or derived by Measurabl from the Subscriber Data that is not personally attributable to or identified with Subscriber or any Subscriber Data.

1.5 Support.

(a) Support. Subject to the terms and conditions of this Agreement, Measurabl shall exercise commercially reasonable efforts to provide Technical Assistance for the use of the Measurabl Services to Eligible Support Recipients during Measurabl's ordinary and customary business hours in accordance with its standard policies and procedures, as described at <https://www.measurabl.com/support/>.

(b) Eligible Support Recipients. Measurabl shall have no obligation to provide Technical Assistance, by any means, to any entity or individual other than Eligible Support Recipients.

(c) Access. As a condition of Measurabl's obligations under Section 1.5 (a), Subscriber shall provide such information and/or access to Subscriber resources as Measurabl may reasonably require in order to provide Technical Assistance under this Agreement. Measurabl shall be excused from any non-performance of its obligations hereunder to the extent any such non-performance is attributable to Subscriber's failure to perform its obligations under this Section 1.5(b).

(d) Means of Access to Technical Assistance. Eligible Support Recipients shall request Technical Assistance (i) by telephoning Measurabl at such telephone number as Measurabl may specify for such purposes from time to time; or (ii) by directing electronic mail requests therefore to Measurabl at the electronic mail address as Measurabl may specify for such purposes from time to time.

2. SUBSCRIBER RESPONSIBILITIES

2.1 Authorized Users Access to Services. Subscriber may permit any Authorized Users to access and use the features and functions of the Measurabl Service as contemplated by this Agreement. Subscriber will be responsible for all actions or omissions of its Authorized Users. Authorized User IDs cannot be shared or used by more than one Authorized User at a time. Subscriber shall use commercially reasonable efforts to prevent unauthorized access to, or use of, the Measurabl Service and shall notify Measurabl promptly of any such unauthorized use known to Subscriber.

2.2 Providers. The Measurabl Service allows Subscriber to link their account with various third party services, including (a) third party services from which Measurabl imports information and/or data, such as U.S. EPA's ENERGY STAR Portfolio Manager® service, Hertz Rental Cars, AMEX Travel, Waste Management (and other waste providers), Concur, MRI Software and Yardi Systems ("**Providers**"), and (b) third party services with which Measurabl shares reports (a "**Report**") created via the Measurabl Service, such as Global Real Estate Sustainability Benchmark, CDP, and The Global Reporting Initiative (as described below (each a "**Standards Organization**"). By linking with a Provider, (y) Subscriber acknowledges and agrees that Measurabl may access, make available and store any information that Subscriber has provided to or stored in Subscriber's Provider account and perform certain operations through the Provider on Subscriber's behalf; and (z) Subscriber represents and warrants that Subscriber is entitled to grant Measurabl access to Subscriber's Provider account without breach by Subscriber of any Provider terms and conditions and without obligating Measurabl to pay any fees or making Measurabl subject to any usage limitations.

2.3 Standards Organization. By linking with a Standards Organization, Subscriber (a) acknowledges and agrees that Measurabl may access Subscriber's Standards Organization account and perform certain operations through the Standards Organization on Subscriber's behalf and (b) Subscriber represents and warrants that Subscriber is entitled to grant Measurabl access to Subscriber's Standards Organization account without breach by Subscriber of any Standards Organization terms and conditions and without obligating Measurabl to pay any fees or making Measurabl subject to any usage limitations. By submitting a Report to a Standards Organization via the Measurabl Service, Subscriber hereby authorizes Measurabl to submit the Report to the Standards Organization on Subscriber's behalf.

2.4 Provision of Rights and Access to Data Sources. To the extent that Subscriber has ordered a particular Data Automation Service, Subscriber agrees to provide Measurabl with the necessary information and permissions to collect that data on behalf of Subscriber. All such data collected shall be considered Subscriber Data.

2.5 Subscriber Responsibility for Data and Security. Subscriber and its Authorized Users shall have access to the Subscriber Data and shall be responsible for all changes to and/or deletions of Subscriber Data and the security of all passwords and other Access Protocols required in order to access the Measurabl Services. Measurabl will use industry standard means to protect the Subscriber Data from unauthorized access. Subscriber shall have the ability to export Subscriber Data out of the Measurabl Services and is encouraged to make its own back-ups of the Subscriber Data. Subscriber shall have the sole responsibility for the accuracy, quality, integrity, legality, reliability, and appropriateness of all Subscriber Data. Subscriber acknowledges and agrees that Measurabl will have no obligation to archive to back-up Subscriber Data, nor will Measurabl have any liability for any loss or corruption of Subscriber Data, nor will Measurabl have any obligation under this Agreement to retain any Subscriber Data, unless otherwise specifically set forth in an Order, after the expiration or termination of the Access Term.

2.6 Service Rules and Guidelines. Subscriber and all Authorized Users shall use the Measurabl Services solely for its internal purposes as contemplated by this Agreement and shall not use the Service to: (a) transmit material containing software viruses or other harmful or deleterious computer code, files, scripts, agents, or programs; (b) interfere with or disrupt

the integrity or performance of the Measurabl Service or the data contained therein; (c) attempt to gain unauthorized access to the Measurabl Service, computer systems or networks related to the Measurabl Service; or (d) interfere with another user's use and enjoyment of the Measurabl Service.

3. FEES AND EXPENSES; PAYMENTS

3.1 Fees. In consideration for the access rights granted to Subscriber and the services performed by Measurabl under this Agreement (including any Add-On Service), Subscriber will pay to Measurabl, without offset or deduction, all fees required by a particular Order or associated with: (a) the annual subscription level selected by Subscriber via Subscriber's account preferences, (b) the number of Sites loaded into the Measurabl Services above the minimum number of Sites set forth in the Order, and (c) any Add-On Services ordered. Measurabl's subscription prices can be found at <https://www.measurabl.com/pricing/>, which such prices can be changed by Measurabl upon written notice to Subscriber at least ten (10) days prior to the next billing period (as described below). Any changed fees will be effective beginning on the next billing period.

3.2 All fees hereunder are billed in advance on a monthly or annual basis on the date Subscriber purchases a subscription on a pro rata basis and at the beginning of each calendar month or year thereafter, as applicable. All fees are due and payable to Measurabl within thirty (30) days of invoice. Subscriber may change its billing frequency at any time via Subscriber's account preferences. Subscriber may change its subscription level at any time via Subscriber's account preferences and the fees associated and the new subscription level will take effect beginning on the next billing period. Measurabl reserves the right (in addition to any other rights or remedies Measurabl may have) discontinue the Measurabl Service and suspend all Authorized Users' and Subscriber's access to the Measurabl Service if any fees are more than thirty (30) days overdue until such amounts are paid in full. All fees will be billed and paid in U.S. dollars.

3.3 Disputed Fees. If Subscriber disputes any fees, taxes, or other charges billed by Measurabl, Subscriber shall notify Measurabl, in writing, of the disputed amount and any relevant information regarding the circumstances of the dispute. Measurabl shall acknowledge receipt of the dispute information in writing to Subscriber. All parties agree to work cooperatively to resolve any such disputed amounts. If the Subscriber fails to provide Measurabl with a notice of such a disputed amount within twenty (20) business days following receipt of Measurabl's invoice for such disputed charge, then such amount is deemed undisputed and due to Measurabl.

3.4 Taxes. Subscriber will be responsible for payment of any applicable sales, use and other taxes and all applicable export and import fees, customs duties and similar charges (other than taxes based on Measurabl's income), and any related penalties and interest for the grant of access rights hereunder, or the delivery of related services, if any. If Subscriber is tax exempt, it shall furnish Measurabl with evidence of its tax exempt status prior to placing an order for the Measurabl Services. Subscriber will make all required payments to Measurabl free and clear of, and without reduction for, any withholding taxes. Any such taxes imposed on payments to Measurabl will be Subscriber's sole responsibility, and Subscriber will, upon Measurabl's request, provide Measurabl with official receipts issued by appropriate taxing authorities, or such other evidence as Measurabl may reasonably request, to establish that such taxes have been paid.

4. TREATMENT OF CONFIDENTIAL INFORMATION

4.1 Ownership of Confidential Information. The Parties acknowledge that during the performance of this Agreement, each Party will have access to certain of the other Party's Confidential Information or Confidential Information of third parties that the disclosing Party is required to maintain as confidential. Both Parties agree that all items of Confidential Information are proprietary to the disclosing Party or such third party, as applicable, and will remain the sole property of the disclosing Party or such third party.

4.2 Mutual Confidentiality Obligations. Each Party agrees as follows: (a) to use Confidential Information disclosed by the other Party only for the purposes described herein; (b) that such Party will not reproduce Confidential Information disclosed by the other Party, and will hold in confidence and protect such Confidential Information from dissemination to, and use by, any third party; (c) that neither Party will create any derivative work from Confidential Information disclosed to such Party by the other Party; (d) to restrict access to the Confidential Information disclosed by the other Party to such of its personnel, agents, and/or consultants, if any, who have a need to know and who have been advised of and have agreed in writing to treat such information in accordance with the terms of this Agreement; and (e) to the extent practicable, return or destroy all Confidential Information disclosed by the other Party that is in its possession upon termination or expiration of this Agreement. Notwithstanding the foregoing, Subscriber agrees that Measurabl may collect aggregated statistical data regarding Subscriber's use of the Service and provide such aggregated statistical data to third parties. In no event shall Measurabl provide to third parties specific data regarding Subscriber or Subscriber's Authorized Users.

4.3 Confidentiality Exceptions. Notwithstanding the foregoing, the provisions of Sections 4.1 and 4.2 will not apply to Confidential Information that (a) is publicly available or in the public domain at the time disclosed; (b) is or becomes publicly available or enters the public domain through no fault of the recipient; (c) is rightfully communicated to the recipient by persons not bound by confidentiality obligations with respect thereto; (d) is already in the recipient's possession free of any confidentiality obligations with respect thereto at the time of disclosure; (e) is independently developed by the recipient; or (f) is approved for release or disclosure by the disclosing Party without restriction. Notwithstanding the foregoing, each Party may disclose Confidential Information to the limited extent required (x) in order to comply with the order of a court or other governmental body, or as otherwise necessary to comply with applicable law, provided that the Party making the disclosure pursuant to the order shall first have given written notice to the other Party and made a reasonable effort to obtain a protective order; or (y) to establish a Party's rights under this Agreement, including to make such court filings as it may be required to do.

4.4 Limitation Period. The obligations set forth in this Section 4 shall survive the termination or expiration of this Agreement for a period of two (2) years.

5. REPRESENTATIONS AND WARRANTIES

(a) Each Party hereby represents and warrants (i) that it is duly organized, validly existing and in good standing under the laws of its jurisdiction of incorporation or organization; and (ii) that this Agreement, when executed and delivered, will constitute a valid and binding obligation of such Party and will be enforceable against such Party in accordance with its terms.

(b) Measurabl represents and warrants that it will provide the Measurabl Service and perform its other obligations under this Agreement in a professional and workmanlike manner substantially consistent with general industry standards. Measurabl further warrants, for the benefit of Subscriber only, that the Measurabl Service will conform in all material respects to the standard user documentation for such Measurabl Service provided to Subscriber by Measurabl (the "**Documentation**") for a period of thirty (30) days after Measurabl firsts makes the Measurabl Service available to Subscriber, provided that such warranty will not apply to failures to conform to the Documentation to the extent such failures arise, in whole or in part, from (i) any use of the Measurabl Service other than in accordance with the Documentation, or (ii) any combination of the Measurabl Service with software, hardware or other technology not provided by Measurabl under this Agreement.

6. DISCLAIMERS, EXCLUSIONS AND LIMITATIONS OF LIABILITY

6.1 Internet Delays. MEASURABL'S SERVICES MAY BE SUBJECT TO LIMITATIONS, DELAYS, AND OTHER PROBLEMS INHERENT IN THE USE OF THE INTERNET AND ELECTRONIC COMMUNICATIONS. MEASURABL IS NOT RESPONSIBLE FOR ANY DELAYS, DELIVERY FAILURES RESULTING FROM SUCH PROBLEMS.

6.2 Disclaimer. EXCEPT AS EXPRESSLY REPRESENTED OR WARRANTED IN SECTION 5, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, MEASURABL SERVICES, THE DOCUMENTATION, AND ALL SERVICES PERFORMED OR PROVIDED BY MEASURABL ARE PROVIDED "AS IS," AND MEASURABL DISCLAIMS ANY AND ALL OTHER PROMISES, REPRESENTATIONS AND WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, SYSTEM INTEGRATION AND/OR DATA ACCURACY. MEASURABL DOES NOT WARRANT THAT THE APPLICATION SERVICE OR ANY OTHER SERVICES PROVIDED BY MEASURABL WILL MEET SUBSCRIBER'S REQUIREMENTS OR THAT THE OPERATION OF THE SERVICE WILL BE UNINTERRUPTED OR ERROR-FREE, OR THAT ALL ERRORS WILL BE CORRECTED.

6.3 Exclusions of Remedies; Limitation of Liability. IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY INCIDENTAL, INDIRECT, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, REGARDLESS OF THE NATURE OF THE CLAIM, INCLUDING, WITHOUT LIMITATION, LOST PROFITS, COSTS OF DELAY, ANY FAILURE OF DELIVERY, BUSINESS INTERRUPTION, COSTS OF LOST OR DAMAGED DATA OR DOCUMENTATION, OR LIABILITIES TO THIRD PARTIES ARISING FROM ANY SOURCE, EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THIS LIMITATION UPON DAMAGES AND CLAIMS IS INTENDED TO APPLY WITHOUT REGARD TO WHETHER OTHER PROVISIONS OF THIS AGREEMENT HAVE BEEN BREACHED OR HAVE PROVEN INEFFECTIVE. THE CUMULATIVE LIABILITY OF MEASURABL TO SUBSCRIBER FOR ALL CLAIMS ARISING FROM OR RELATING TO THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, ANY CAUSE OF ACTION SOUNDING IN CONTRACT, TORT, OR STRICT LIABILITY, WILL NOT EXCEED TOTAL AMOUNT OF ALL FEES PAID TO MEASURABL BY SUBSCRIBER UNDER SECTION 3.1 DURING THE SIX (6) MONTH PERIOD PRIOR TO THE ACT, OMISSION OR OCCURRENCE GIVING RISE TO SUCH LIABILITY. THIS LIMITATION OF LIABILITY IS INTENDED TO APPLY WITHOUT REGARD TO WHETHER OTHER PROVISIONS OF THIS AGREEMENT HAVE BEEN BREACHED OR HAVE PROVEN INEFFECTIVE.

6.4 Essential Basis of the Agreement. Subscriber acknowledges and understands that the disclaimers, exclusions and limitations of liability set forth in this Section 6 form an essential basis of the agreement between the Parties and that absent such disclaimers, exclusions and limitations of liability, the terms and conditions of this Agreement would be substantially different.

7. INDEMNIFICATION

Measurabl agrees to indemnify, defend and hold harmless Subscriber from and against any and all losses, liabilities, costs (including reasonable attorneys' fees) or damages awarded to a third party resulting from any claim by that third party that the Measurabl Service and/or the Documentation infringes such third party's patents issued as of the Effective Date, or infringes or misappropriates, as applicable, such third party's copyrights or trade secret rights, provided that Subscriber promptly notifies Measurabl in writing of the claim, cooperates with Measurabl, and allows Measurabl sole authority to control the defense and settlement of such claim. If such a claim is made or appears possible, Subscriber agrees to permit Measurabl, at Measurabl's sole discretion, to enable it to continue to use the Measurabl Service or the Documentation, as applicable, or to modify or replace any such infringing material to make it non-infringing. If Measurabl determines that none of these alternatives is reasonably available, Subscriber shall, upon written request from Measurabl, cease use of and, if applicable, return such materials that are the subject of the infringement claim. This Section 7 shall not apply if the alleged infringement arises, in whole or in part, from (i) combination, operation or use of the Measurabl Service with other software, hardware or technology not provided by Measurabl, or (ii) related to the Subscriber Data.

8. TERM AND TERMINATION

8.1 Term. The term of this Agreement will commence on the Effective Date and will continue until the last Access Term expires, unless earlier terminated in accordance with this Section 8. This Agreement will automatically renew for successive one (1) year terms on the anniversary of the Effective Date unless either Party provides written notice of its desire not to renew at least thirty (30) days prior to the expiration of the then-current term (the initial term, together with any renewal terms, collectively, the "**Term**").

8.2 Termination for Breach. Either Party may, at its option, terminate this Agreement in the event of a material breach by the other Party. Such termination may be effected only through a written notice to the breaching Party, specifically identifying the breach or breaches on which such notice of termination is based. The breaching Party will have a right to cure such breach or breaches within thirty (30) days of receipt of such notice, and this Agreement will terminate in the event that such cure is not made within such thirty (30)-day period.

8.3 Termination Upon Bankruptcy or Insolvency. Either Party may, at its option, terminate this Agreement immediately upon written notice to the other Party, in the event (a) that the other Party becomes insolvent or unable to pay its debts when due; (b) the other Party files a petition in bankruptcy, reorganization or similar proceeding, or, if filed against, such petition is not removed within ninety (90) days after such filing; (c) the other Party discontinues its business; or (d) a receiver is appointed or there is an assignment for the benefit of such other Party's creditors.

8.4 Effect of Termination. Upon any termination of this Agreement, Subscriber will (a) immediately discontinue all use of the Measurabl Service and any Measurabl Confidential Information; and (b) promptly pay to Measurabl all amounts due and payable under this Agreement.

8.5 Survival. The provisions of Sections 2.4, 4, 6, 7, 8.5 and 9 will survive the termination of this Agreement.

8.6 Suspension of Service. If Subscriber fails to pay undisputed amounts in accordance with the terms and conditions hereof, the Order or any other agreement related, directly or indirectly, to the provision of the Measurabl Service to Subscriber or such amounts are not timely paid on behalf of Subscriber, Measurabl shall have the right, in addition to any of its other rights or remedies, to suspend the Service, without liability to Subscriber until such amounts are paid in full.

9. MISCELLANEOUS

9.1 Entire Agreement. This Agreement sets forth the entire agreement and understanding between the Parties with respect to the subject matter of this Agreement and, supersedes and merges all prior oral and written agreements, discussions and understandings between the Parties with respect to the subject matter of this Agreement, and neither of the Parties will be bound by any conditions, inducements or representations other than as expressly provided for in this Agreement.

9.2 Independent Contractors. In making and performing this Agreement, Subscriber and Measurabl act and will act at all times as independent contractors, and, except as expressly set forth herein, nothing contained in this Agreement will be construed or implied to create an agency, partnership or employer and employee relationship between them. Except as expressly set forth herein, at no time will either Party make commitments or incur any charges or expenses for, or in the name of the other Party.

9.3 Notices. All notices required by or relating to this Agreement will be in writing and will be sent by means of certified mail, postage prepaid, to the Parties at their respective addresses set forth in the preamble to this Agreement, or addressed to such other address as the receiving Party may have given by written notice in accordance with this provision.

9.4 Amendments; Modifications. This Agreement may not be amended or modified except in a writing duly executed by authorized representatives of both Parties.

9.5 Assignment; Delegation. Subscriber shall not assign any of its rights or delegate any of its duties under this Agreement without the express, prior written consent of Measurabl, and, absent such consent, any attempted assignment or delegation will be null, void and of no effect.

9.6 No Third Party Beneficiaries. The Parties acknowledge that the covenants set forth in this Agreement are intended solely for the benefit of the Parties, their successors and permitted assigns. Nothing herein, whether express or implied, will confer upon any person or entity, other than the Parties, their successors and permitted assigns, any legal or equitable right whatsoever to enforce any provision of this Agreement.

9.7 Severability. If any provision of this Agreement is invalid or unenforceable for any reason in any jurisdiction, such provision will be construed to have been adjusted to the minimum extent necessary to cure such invalidity or unenforceability. The invalidity or unenforceability of one or more of the provisions contained in this Agreement will not have the effect of rendering any such provision invalid or unenforceable in any other case, circumstance or jurisdiction, or of rendering any other provisions of this Agreement invalid or unenforceable whatsoever.

9.8 Waiver. No waiver under this Agreement will be valid or binding unless set forth in writing and duly executed by the Party against whom enforcement of such waiver is sought. Any such waiver will constitute a waiver only with respect to the specific matter described therein and will in no way impair the rights of the Party granting such waiver in any other respect or at any other time. Any delay or forbearance by either Party in exercising any right hereunder will not be deemed a waiver of that right.

9.9 Governing Law. THIS AGREEMENT WILL BE GOVERNED BY AND INTERPRETED IN ACCORDANCE WITH THE LAWS OF THE STATE OF CALIFORNIA, WITHOUT REGARD TO CONFLICTS OF LAW PRINCIPLES THEREOF OR TO THE UNITED NATIONS CONVENTION ON THE INTERNATIONAL SALE OF GOODS.

9.10 Counterparts. This Agreement may be executed in any number of counterparts, each of which when so executed will be deemed to be an original and all of which when taken together will constitute one Agreement.

9.11 Force Majeure. Measurabl shall be excused from performance of its obligations under this Agreement if such a failure to perform results from compliance with any requirement of applicable law, acts of God, fire, strike, embargo, terrorist attack, war, insurrection or riot or any other cause beyond the reasonable control of Measurabl. Any delay resulting from any of such causes shall extend performance accordingly or excuse performance, in whole or in part, as may be reasonable under the circumstances.

10. DEFINITIONS

Certain capitalized terms, not defined above, have the meanings set forth below.

10.1 "Access Protocols" means the passwords, access codes, technical specifications, connectivity standards or protocols, or other relevant procedures, as may be necessary to allow Subscriber or any Authorized Users to access the Measurabl Services.

10.2 "Add-On Service" means the Data Automation Services, Certification Services, the Survey Services and any other additional services that Measurabl makes available through the Measurabl Services and that Subscriber orders under an Order.

10.3 "Authorized User" means any individual who is an employee of Subscriber or such other person or entity as may be authorized by an Order (e.g., a third party providing services to Subscriber), authorized, by virtue of such individual's relationship to, or permissions from, Subscriber, to access the Measurabl Service pursuant to Subscriber's rights under this Agreement.

10.4 "Certification Services" means the optional certification services that are offered by Measurabl (e.g., the ENERGY STAR® certification services).

10.5 "Confidential Information" means all written or oral information, disclosed by either Party to the other, related to the operations of either Party or a third party that has been identified as confidential or that by the nature of the circumstances surrounding disclosure ought reasonably to be treated as confidential.

10.6 "Data Automation Services" means the automated collection of Subscriber data from third party data Providers as ordered by Subscriber.

10.7 "Subscriber Data" means the data provided by Subscriber to Measurabl or collected by Measurabl on behalf of Subscriber from a provider through the Data Automation Services.

10.8 "Eligible Support Recipients" has the meaning set forth in Section 1.5(b).

10.9 "Order" means the electronic process where Subscriber subscribes to a given Measurabl Service to be made available by Measurabl pursuant to this Agreement or an additional order electronically created from within the Measurabl Services.

10.10 "Measurabl Services" means the services ordered by Subscriber through an Order and provided by Measurabl by means of access to certain content and use of the features and functionality of software applications available and accessible within the identified Measurable web sites, solely to the extent set forth and further described in, and as limited by, the Orders executed by the Parties.

10.11 "Sites" means the number of discrete objects loaded into the Measurabl Services after importing Subscriber's Data (e.g. "buildings, campuses, assets, or physical locations such as leased spaces").

10.12 "Survey Services" means the provision of survey and related analytics as ordered by Subscriber.

10.13 "Technical Assistance" means the provision of responses by Measurabl personnel to questions from Eligible Support Recipients related to use of the Measurabl Services, including basic instruction or tutorial assistance regarding the features and functions of the Measurabl Services.